

1 step and all of a sudden make it available.

2 We're not talking about information available for  
3 instance, with your accountants or something like that.  
4 We're talking about having to actually go through a step of  
5 creating a computer program to provide the information.  
6 It's preposterous. You should not have to do that.

7 MR. SCHAUBLE: Your Honor, Mr. Shainis' argument  
8 shows exactly why this question is relevant. He assumes  
9 that the effort was Herculean. I'm trying to find out how  
10 much effort was involved.

11 CHIEF JUDGE CHACHKIN: Well, the fact of the  
12 matter is, it was never done. Such a program was never  
13 created, so we're not dealing with a situation where there  
14 was a program in existence which wasn't used. There was no  
15 such program created.

16 Now, you want to speculate how long it would take  
17 him to prepare such a program. What I will do is, I will  
18 sustain the objection. I'll permit you to ask the witness  
19 this question, which will not be part of the record of my  
20 decision, but can go forward to the Commission.

21 MR. SCHAUBLE: Very well, Your Honor.

22 BY MR. SCHAUBLE:

23 Q Mr. Sobel, do you need the question repeated?

24 A No. It would take something less than a day.

25 Q Okay, thank you.

1 CHIEF JUDGE CHACHKIN: Remember, this is not  
2 evidence in the record. This is only an offer of proof.  
3 It's not part of the record used in findings in this case.

4 MR. SCHAUBLE: Understood, Your Honor.

5 CHIEF JUDGE CHACHKIN: You could still question  
6 him on that and that will be also part of your proof.

7 MR. SHAINIS: I understand, Your Honor.

8 MR. SCHAUBLE: Your Honor, I'm providing the  
9 witness a copy of what's been offered into evidence as WTB  
10 Exhibit 19.

11 BY MR. SCHAUBLE:

12 Q Mr. Sobel, if you note after the first few pages,  
13 you'll see a series of documents entitled at the top,  
14 Loading Report?

15 A Yes.

16 Q And, did you have any role in preparing these  
17 loading reports?

18 A I don't know when they were prepared.

19 Q Mr. Sobel, turn to the first page of the exhibit.  
20 And, under answer to Interrogatory 4, do you see these  
21 reports were generated as of November 9, 1995? Do you see  
22 that?

23 A Yes.

24 Q Does that refresh your recollection in any way in  
25 determining whether you had any role in preparing this

1 report?

2 A Yes, it does.

3 Q Okay, and did you have any such role?

4 A Yes, I did.

5 Q Okay, what was your role?

6 A These reports were prepared for Mr. Kay in  
7 response to this interrogatory, in an effort to satisfy the  
8 Commission's desire to know the loading at some previous  
9 point in time.

10 Q Did you physically prepare these reports?

11 A I facilitated the printing of the document, but I  
12 did not handwrite anything on these reports.

13 Q When you say you facilitated the printing of these  
14 documents, how exactly did you go about that?

15 A Mr. Kay needed these reports to include loading  
16 information from a prior period of time, as I stated. Our  
17 system did not allow that. We, in an effort to do this, we  
18 had to undelete all deleted customers, then recalculate  
19 their loading information and print these reports and then  
20 redelete them.

21 Q Are you familiar with the term delete flag?

22 A Yes.

23 Q Can you explain for the record your understanding  
24 of what a delete flag is?

25 A In a Fox Pro database, you can mark any record as

1 deleted. When I marked the record deleted, I removed their  
2 information from the loading files in the system.

3 If you issue a particular command, it will  
4 actually remove those records from the customer file  
5 forever. But, we don't mark those records. We don't  
6 actually issue that command, because we may want to note  
7 this client or recall this client at a later date for  
8 another reason.

9 Q Now, in connection with preparing these reports,  
10 did you perform any work in connection with disabling delete  
11 flags?

12 A Yes.

13 Q Okay. Please describe your work in that regard?

14 A There were quite a number of customers on Mr.  
15 Kay's datafile, customer datafile, that had been deleted  
16 over the years. Mostly, I assume, because he was no longer  
17 doing business with them.

18 We had to remove the delete flag from each of  
19 those records, store the fact that they were deleted  
20 someplace else, calculate these reports, and then redelete  
21 them when we were all done.

22 Q Did you perform any sort of programming work that  
23 would allow that process to take place?

24 A Yes, I did.

25 Q Other than performing that work, did you perform

1 any other such work in connection with preparation of these  
2 reports in November, 1995?

3 A I believe the only other work I did was to  
4 facilitate a mass printing of all these loading reports.  
5 Because there are many frequencies. You would have had to  
6 type in each frequency, one at a time. I think I, I think  
7 we facilitated it so we could run all of them.

8 Q Okay. Was this facilitation in the manner of  
9 writing a program?

10 A Yes.

11 Q Now, prior to November, 1995, on the DOS system,  
12 was it possible for Mr. Kay or his employees to generate  
13 loading reports in the format shown there?

14 A We were not on the DOS system before 1995.

15 Q I thought your testimony was that the end of the  
16 Xenix system was approximately May of 1994?

17 A I don't understand the question.

18 Q Okay. Prior to November, 1995, on the DOS system,  
19 was it possible for you to prepare, for these employees to  
20 generate reports in this format that you see here in WTB  
21 Exhibit 19?

22 A In the format, yes, but not with this information.

23 Q Would it be correct that those reports would only  
24 show customers who had not been deleted?

25 A That's correct.

1 Q Now, would it be correct as of November, 1995,  
2 would it also be possible to view these types of reports on  
3 a computer screen?

4 A Yes, again, not with this specific set of data.

5 Q Now, let me ask you this question. Would the  
6 capability to print reports, excluding deleted customers,  
7 have been present in the DOS system on or about May, 1994?

8 A I think so. I don't recall when we added these  
9 reports.

10 Q Let me ask you, in the Xenix system, would it have  
11 been possible to view reports of this type, again  
12 understanding that deleted customers would not have been  
13 included?

14 MR. SHAINIS: Objection as to relevance, Your  
15 Honor. I haven't objected to the previous four questions,  
16 but if the material that the Commission wanted is contained  
17 in Exhibit 19 and what the witness is testifying to is that  
18 you could have certain material but not what the Commission  
19 wanted, how is it relevant?

20 MR. SCHAUBLE: Your Honor, we have a situation  
21 here where this material was not provided to us in response  
22 to 308(b) letters and I'm asking the witness -- these  
23 questions are relevant in determining, you know, relative  
24 needs or difficulties providing this information.

25 I also point out, Your Honor, that the 308(b)

1 letter, by this time, did not, only requested information  
2 that as of any day after January 1, 1994 convenient to Mr.  
3 Kay, so he could have responded to the letter by requesting,  
4 by printing current information without the deleted  
5 customers on there. So, to that extent, it is relevant to  
6 the 308(b) issue.

7 CHIEF JUDGE CHACHKIN: But, does it provide the  
8 information that you requested?

9 MR. SHAINIS: No.

10 MR. KNOWLES-KELLETT: It would certainly go one  
11 way, Your Honor.

12 MR. SHAINIS: But, it doesn't provide what you  
13 requested.

14 MR. KNOWLES-KELLETT: Well, it does. In the  
15 letter, we did not request the historic loading information,  
16 which I think your objection goes to. And, so, it does  
17 provide a significant portion of the information as  
18 requested.

19 Another thing that would have been necessary would  
20 have been for Mr. Kay to annotate in this manner -- and tell  
21 us which were LTR and what those -- it would have been an  
22 awful long way towards the loading request. It would have  
23 not have done the other information, but it would have gone  
24 a long way towards that.

25 CHIEF JUDGE CHACHKIN: I'll overrule the

1 objection.

2 THE WITNESS: Can you state the question, please?

3

4 BY MR. SCHAUBLE:

5 Q Certainly. Now, under the Xenix system, Mr.  
6 Sobel, would it have been possible to view reports of this  
7 type without the deleted customers?

8 A Again, I don't recall when we added this  
9 particular report. If it was during the Xenix time, then  
10 after that time, it would be possible and before that time,  
11 it would not.

12 (Pause.)

13 Q Mr. Sobel, would it have been possible to, under  
14 the Xenix system, to print reports of this type, if the  
15 capability to review these reports existed?

16 A Yes.

17 Q Mr. Sobel, do you recall that the Northridge  
18 earthquake was on January 17, 1994?

19 A I do.

20 Q Now, do you know whether Mr. Kay's computer system  
21 suffered any damage as a result of that earthquake?

22 A I believe it did.

23 Q Okay, and did you perform any work in assisting  
24 Mr. Kay in fixing or recovering from that damage?

25 A Immediately thereafter?



1 Q At any time?

2 A Impossible to say. When the conversion occurred,  
3 there was damage in the files, damage -- the conversion  
4 occurred in May. It's quite possible that some of the  
5 damages to the files occurred at the earthquake, but I  
6 couldn't prove that or know for sure.

7 Q Let me ask you this question. Did you perform any  
8 work for Mr. Kay immediately after the Northridge  
9 earthquake?

10 A I don't recall. I don't believe I had any  
11 billings for that period of time.

12 Q Now, do you recall, you testified a moment ago  
13 concerning the conversion. Would you explain for the record  
14 in more detail the conversion you're referring to?

15 A All of the programs had to be copied onto floppy  
16 disks and then copied back from floppy disks to the new  
17 hardware, as did the data files.

18 In some cases, the data files had to be cut up  
19 into small pieces so that they would fit on floppy disk. At  
20 the time, we had no direct connection between the two  
21 computer systems.

22 Q Now, would this be in connection with the  
23 conversion from the Xenix system to the DOS system?

24 A That's exactly what it would be.

25 Q Now, was there any damage to the data files, did

1 you notice any damage to the data files in the time period  
2 when this conversion was taking place?

3 A Yes, there were several files that had corrupt  
4 data in it that had to be removed.

5 Q Were any of those files relating to Lucky's  
6 billing records?

7 A All of the system was part of Lucky's billing  
8 records.

9 Q Did you make any effort to reconstruct that data?

10 A No, there's no possibility of reconstruction here.

11 Q Do you recall the specific nature, can you  
12 describe the specific nature of the damage to the files?

13 A There were sporadic what we call pieces of garbage  
14 in the data file and incurred in a couple of the data files,  
15 as I recall, and just where you're looking at the data file  
16 and there's garbage written all over it.

17 Q Now, can you describe what type of files for  
18 information for Lucky's customers would be stored on Mr.  
19 Kay's system?

20 MR. SHAINIS: Object to the question. It's  
21 overbroad and vague.

22 CHIEF JUDGE CHACHKIN: I'll overrule the  
23 objection.

24 THE WITNESS: There are probably some 20 different  
25 data files on their system, on the Lucky's billing system.

1 Anywhere from the customer file to cash receipt files to  
2 invoice files to some frequency files, trunking files, tax  
3 files, all kinds of different things that would be used in  
4 an accounts receivable and billing system.

5 BY MR. SCHAUBLE:

6 Q Do you know what type of file format that  
7 information would be kept on?

8 CHIEF JUDGE CHACKIN: Which information?

9 THE WITNESS: It's all the same, D base.

10 CHIEF JUDGE CHACKIN: Go ahead, what's the  
11 answer?

12 THE WITNESS: It's all D base or Fox based data  
13 files. They're all the same format.

14 CHIEF JUDGE CHACKIN: What is Fox based?

15 THE WITNESS: Fox base is a programming language  
16 like Basic or Fortran or any of these other things. It's a  
17 derivative from Ashton tapes D base, brand name database  
18 system. Fox based was one of the subsequent. Fox software  
19 developed this language as an extension to D base. Now,  
20 it's Fox Pro, Visual Fox Pro. Microsoft now owns it. It's  
21 all that same database structure.

22 BY MR. SCHAUBLE:

23 Q Now, on the Xenix system, would the customer  
24 information have been stored in the same type of file, the  
25 same file format?

1 A Yes.

2 Q Mr. Sobel, direct your attention back for a moment  
3 to WTB Exhibit 347, which is the customer maintenance? Now,  
4 is it correct that at the time these reports were printed,  
5 that all the underlying customer information in here would  
6 have been stored in the computer as part of a DBF file?

7 A That's correct.

8 Q In 1995, were there programs on the market that  
9 would allow you to open or view D based files?

10 A In DOS or Xenix?

11 Q In DOS first?

12 A Yes.

13 Q Would such programs have existed in Xenix?

14 A To my knowledge, only Fox base itself would allow  
15 you to do it.

16 Q Would your custom billing program have been  
17 necessary in order to view the underlying D based files in  
18 Xenix?

19 A In this format, yes. But, you could have opened  
20 up the database and viewed it using the Fox base for Xenix  
21 that was on the system.

22 Q Would it be correct that under those  
23 circumstances, you would view the information, but it would  
24 just be in a different format?

25 A More like a spreadsheet format.

1           Q     Now, in the first part of 1994, Mr. Sobel, would  
2     there be any information shown on the customer file  
3     maintenance you have before you in WTB Exhibit 347 that  
4     would not have been contained in the underlying DBF files?  
5     I'm referring not to this specific information, but to the  
6     type of information.

7           A     Can you be more specific?

8           Q     Certainly. In the first part of 1994, Mr. Sobel,  
9     would the underlying DBF file contain information concerning  
10    customer name and address?

11          A     Yes, it would.

12          Q     Would it contain information concerning each type  
13    of customer-operated firm?

14          A     Probably, yes.

15          Q     What do you mean, probably?

16          A     Well, again, it depends on when I made the  
17    modification to add the mobile column to the frequencies. I  
18    don't recall exactly when that was done, whether it was done  
19    sometime during Xenix or about that time.

20          Q     Okay. Do you see about two-thirds of the way  
21    down, there's a reference to total mobiles?

22          A     Yes.

23          Q     Would it be correct that that information would  
24    have been in the underlying DBF files as of early 1994?

25          A     That was part of the original design of the

1 program.

2 Q Okay. And, is it correct that the listing MOB  
3 under each site, that feature of the program was added at  
4 some point later?

5 A Yes. Neither of these meets the data required --  
6 it's not required that you enter a number of mobiles to  
7 enter the customer.

8 Q Okay. Now, on the DOS system, would it be  
9 possible to copy the underlying D base files onto a floppy  
10 disk?

11 A Yes, it would.

12 Q Please briefly describe the process by which you  
13 would perform that process?

14 A Provided the file was not larger than what the  
15 floppy could hold, you would simply issue a copy, file name,  
16 space, a: and copy that file.

17 Q Now, on the Xenix system, would it have been  
18 possible to copy the underlying D base files onto a floppy  
19 disk, again, same rules apply, and would the procedure  
20 basically have been the same?

21 A Slightly different, but basically the same.

22 Q Now, in 1994, would Mr. Kay have been able to have  
23 performed that copying function?

24 A I think so, yes.

25 MR. SCHAUBLE: Your Honor, could we go off the

1 record for a minute?

2 CHIEF JUDGE CHACHKIN: All right, we'll go off the  
3 record.

4 (Discussion held off the record.)

5 CHIEF JUDGE CHACHKIN: Back on the record.

6 BY MR. SCHAUBLE:

7 Q Mr. Sobel, please direct your attention to what's  
8 been marked for identification as WTB Exhibit 281.

9 MR. KELLER: Just for purposes of clarification,  
10 this exhibit is not in evidence, correct? It's not yet been  
11 admitted?

12 MR. SCHAUBLE: I believe that's correct. I  
13 believe Your Honor's ruling was that you were going to  
14 reserve ruling on these documents pending the testimony.

15 BY MR. SCHAUBLE:

16 Q Mr. Sobel, have you, do you have the document  
17 before you?

18 A Yes, I do.

19 Q Have you seen this document before?

20 A I believe it was shown to me at my deposition.

21 Q Okay. And, do you have an understanding as to  
22 what this document is?

23 A Yes, I do.

24 Q And, please state your understanding?

25 A This is the customer database. Basically, it

1 generates these reports, most of the information on this.

2 Q Now, so would it be correct that this would be the  
3 format in which an underlying D base file on Mr. Kay's  
4 system could be printed?

5 A Could be viewed.

6 Q Mr. Sobel, is it correct that from this document  
7 here --

8 CHIEF JUDGE CHACHKIN: What page are you referring  
9 to?

10 MR. KNOWLES-KELLETT: It's a general question,  
11 Your Honor. What we'd like to avoid is the necessity of  
12 explaining how to lay this thing out in a chart form,  
13 because it would take up the floor in front of the bench.  
14 And, Your Honor, if you recall, we said we've tried not to  
15 rely on this document for the truth of the matter asserted,  
16 but instead just for the information, what information is  
17 contained therein.

18 So, we're going to try not to get into specifics,  
19 if we can, if you'd just permit us a moment. We might be  
20 able to --

21 CHIEF JUDGE CHACHKIN: Well, let's see where he  
22 goes.

23 MR. KNOWLES-KELLETT: Okay.

24 BY MR. SCHAUBLE:

25 Q Mr. Sobel, is it correct that this file, as



1 printed, would contain all the information listed on the  
2 customer print screens, which is Exhibit 347, for those  
3 customers who are contained in this database?

4 A The data that appears on this, most of it comes  
5 from this file, okay. Is that an answer to your question?

6 Q Let me ask you this. Is the information contained  
7 in the customer print screens, Exhibit 347, which does not  
8 come from --

9 A Yes, the only thing that doesn't come from it is  
10 the list of the sites down the side, which are not in this  
11 database.

12 Q Okay. And, you're referring to, for instance, 10  
13 Lukens, 11 Oats?

14 A Yes, that does not come from this screen.

15 Q Would it be correct that that would be a generic  
16 listing of numbers which are associated with various  
17 transmitter sites, correct?

18 A Yes.

19 MR. SCHAUBLE: No further questions, Your Honor.

20 CHIEF JUDGE CHACHKIN: Cross-examination?

21 MR. KELLER: Yes, Your Honor, I don't believe that  
22 cross-examination should take very long. It might go beyond  
23 the normal lunch hour, but could we have like a five minute  
24 break?

25 CHIEF JUDGE CHACHKIN: Yes, we'll have a five

1 minute recess.

2 (Whereupon, a short recess was taken.)

3 CHIEF JUDGE CHACHKIN: Back on the record.

4

5

6

CROSS-EXAMINATION

7

BY MR. KELLER:

8

Q Mr. Sobel, you testified that you currently  
9 maintain Mr. Kay's DOS system, but you did not maintain his  
10 Xenix system in the past, is that correct?

11

A That's correct.

12

13

Q So, you would not be the person Mr. Kay would  
generally call for general problems with the Xenix system,  
14 is that correct?

15

A No. Mr. Kay pretty much took care of it himself.

16

17

Q Do you know if he took care of it himself or if he  
relied on someone else?

18

A I'm not aware of anybody he called.

19

20

Q How were you, personally and your business,  
affected by the earthquake?

21

22

A I lost two block walls of the house, a plate glass  
window. Aquarium fell over in the den, wiped out my carpet.

23

Q Was your business disrupted?

24

25

A No, not really, because my business at the time  
was in Century City.

1 Q Okay.

2 A Which is 30 miles away.

3 Q Did the earthquake have any impact on the time  
4 that you devoted to your business?

5 A Tent on the front lawn for three days, no  
6 electricity, but other than that, not really.

7 Q Now, you testified about a process that you went  
8 through in converting the data files over from the Xenix  
9 system to the DOS system, and you testified that in that  
10 process, you discovered that there were certain of the data  
11 files that were corrupted. My question is, that corruption  
12 to the data files, do you have -- there's no possibility  
13 that the conversion process corrupted those files, is there?

14 A I don't think so, because when we discovered the  
15 corrupt data, we attempted again to copy the data, and then  
16 we opened up the data files on the Xenix system and saw the  
17 corruption in the Xenix system.

18 Q So, in other words, the process that you  
19 described, as I understood it, the necessity to copy the  
20 files from the Xenix system onto disks, and then to copy  
21 them from those disks onto the new DOS system?

22 A Right.

23 Q And, if I understood your testimony of when you  
24 discovered the corrupt files, you then -- the original files  
25 were still resident on the Xenix system?

1           A     That's right, we didn't have to erase anything.

2           Q     So, you went back there, but the same corruption  
3 existed on the Xenix system?

4           A     That's correct.

5           Q     Do you know a Mike Stephanik?

6           A     The name is familiar.

7           Q     What do you know about him, if anything?

8           A     I can't place him. I think he was an employee  
9 over there at some time.

10          Q     What about Chris Ott? Do you know a Chris Ott?

11          A     That doesn't ring a bell at all. Oh -- yes, I do  
12 know those people. They -- Mike Stephanik was a person that  
13 helped Mr. Kay out on the Xenix system, and I connected  
14 them. It was a long time ago.

15          Q     What did you do, if anything, when you discovered  
16 the corrupt data files? What process did you undertake?

17          A     The only thing you can really do is mark those  
18 records for deletion and then, what they say, pack the file,  
19 which removes all deleted records, so that there is no  
20 corruption in the database after that point. So, if there  
21 was valid data on those records, those records were  
22 basically purged.

23          Q     Now, when you say you deleted the records at that  
24 point, you're talking about this removal, as opposed to just  
25 setting a delete flag?

1 A Right.

2 Q So, when you attacked the file, it wouldn't  
3 necessarily remove files that just had the delete flags up,  
4 correct?

5 A No, it would have done that, although we had to  
6 deal with that. You know, we had to do something different.  
7 We probably, and I was only speculating, because I don't  
8 recall exactly -- if I were to have to do that today, I  
9 would have had to copy those deleted records out of another  
10 file, remove the records, and then copy those records back  
11 and mark deletion.

12 Q But, you did not --

13 A Otherwise, it would have deleted all the deleted  
14 flagged records.

15 Q But, you don't recall --

16 A I don't recall doing it specifically, but that's  
17 what I would have had to do, if I had to do it right now.

18 Q Are you aware that there was a process thereafter  
19 undertaken to re-enter data?

20 A I don't recall. I don't recall.

21 Q Do you have any knowledge of any efforts made to  
22 rebuild the data file?

23 A No, that would have been done by his people, not  
24 me.

25 Q In the course of your dealing with the system on a

1 periodic basis after May of '95, did you become aware that  
2 additional data was being entered?

3 MR. SCHAUBLE: Objection, just to the time. You  
4 said May '95.

5 MR. KELLER: Yes, I believe May of '95 -- I'm  
6 sorry, May '94.

7 THE WITNESS: I'm not aware that they had to re-  
8 enter anything. If damaged records occurred and the data  
9 file wasn't intact, we may have had to remove all the prior  
10 records to that point in time to maintain any kind of  
11 integrity.

12 BY MR. KELLER:

13 Q And, that's because of accounting principles?

14 A Right.

15 Q Could you describe that just briefly?

16 A In this system, you're able to run what's called  
17 an accounts receivable ledger card, which basically takes  
18 every invoice and every cash receipt, adds them  
19 mathematically to come up with the current accounts  
20 receivable balance.

21 If we were missing some of the billing, then that  
22 number wouldn't work. So, we would have had to remove  
23 everything for that customer before that point in time and  
24 load up a balance that would allow the math to come forward  
25 correctly. That's would have had to happen to make sure

1 that the system was in balance.

2 Q Mr. Sobel, just referring to any one of the sheets  
3 in Exhibit 19, just for reference purposes --

4 A Is that this?

5 Q No, the customer print -- the customer data file,  
6 whatever they're called.

7 MR. SCHAUBLE: It's in the notes.

8 MR. KELLER: Exhibit 19, I'm sorry, I'm sorry.

9 THE WITNESS: The loading reports?

10 BY MR. KELLER:

11 Q I meant Exhibit 347, the sheet --

12 A Oh, this one?

13 Q No, no, no, the sheet that you just turned over.  
14 Yes, that's Exhibit 347?

15 A Correct.

16 Q By referring to the sheets such as those that are  
17 produced in Exhibit 347, now, I believe it's your testimony  
18 that this is the result of a custom program that you  
19 developed for Mr. Kay, correct?

20 A That's correct.

21 Q Now, are you holding the one that's Bates stamped  
22 322600 at the bottom?

23 A 3226? A&G Auto Parts?

24 Q Yes, just so we're referring to the same file.

25 CHIEF JUDGE CHACHKIN: The date stamp is 3226?

1 BY MR. KELLER:

2 Q I'm just picking this one out as an example. Now,  
3 the way this program works, I want to understand it, you  
4 testified several times that certain fields of information  
5 were not required to be entered by the person who was  
6 entering. Are there certain fields that are required to be  
7 entered?

8 A The system would maintain fields, for instance,  
9 like last billed and deposit dates. Those, the system would  
10 maintain without you being able to go in and edit them.  
11 They're, therefore, automatic.

12 Also, accounts receivable balance in the upper  
13 right hand corner, where it says \$170.10, that's maintained  
14 by the system and you wouldn't change any of that stuff when  
15 you're editing this screen.

16 The only other required fields would be that on  
17 sites one through ten, that your monthly bill amounts added  
18 up to, in total, what you wanted to charge them on either a  
19 monthly basis or a quarterly basis or a yearly basis, and  
20 that brings me to the next point, which was, there's a field  
21 in here of -- right in the middle, about four lines from the  
22 top, it says, Bill Period, and it says Q. That means that  
23 this customer is set on a quarterly basis, he gets billed  
24 every three months. That would be a required field, if it's  
25 quarterly, monthly or yearly.



1 Q So, that would be required.

2 A There's some --

3 Q Now, most of the other fields, the person who was  
4 entering this data could either enter the data, not enter  
5 it, or could change the data from time to time, correct?

6 A That's correct.

7 Q When data is changed, what happens to the previous  
8 existing data?

9 A It's gone.

10 Q So, for example, on this one for A&G Auto Parts,  
11 under frequency, it says 851.8125. And, it has a site code  
12 of 10-49. Now, my understanding, based on other testimony  
13 here -- correct me if I'm wrong -- but that would indicate  
14 that this particular customer is assigned frequency 851.8125  
15 at Mount Lukens?

16 A That's correct.

17 Q Based on this sheet. Were this customer to later  
18 change repeaters and supposedly put them on a different  
19 frequency and on Sierra Peak, what would the process be?  
20 You go and overwrite this information?

21 A Exactly.

22 Q Would there be any record maintained?

23 A No.

24 Q So, when you testified earlier about removing the  
25 delete flags in order to enable Mr. Kay to generate a

1 historical loading report, isn't it inaccurate to really  
2 call it a historical loading report?

3 A That's correct, because any time you change any  
4 one of these ten items, it goes to a separate file called  
5 FREQ, F-R-E-Q, and it makes sure that the data in that file  
6 corresponds to the data in this file, okay. And, I use that  
7 file to actually print the loading report.

8 So, if I make a change to one of these records, it  
9 goes out to that file and overwrites that record and it's  
10 gone.

11 Q So, I'm going to characterize what you did and I  
12 want you to answer if my characterization is correct. I'm  
13 talking now about November of 1995.

14 What you did were modifications to suppress the  
15 delete flags, so that you could generate a report which  
16 included old records, but not necessarily all old records?  
17 Because it did not include records that might have been  
18 overwritten or actually removed from the system, is that  
19 correct?

20 A Not quite.

21 Q Well, fill me in --

22 A Yeah, what would happen is that when a customer  
23 was deleted, this screen might stay the same as of that  
24 moment in time, but the records in the other file that I  
25 used to run the loading reports were removed.

1 Q Right.

2 A Okay, when you undelete them, it rewrites this  
3 file. And, what I did was, I wrote a program to undelete  
4 the file, undelete the customer, rewrite this file for every  
5 customer that was deleted, regardless of when it was deleted  
6 -- because I don't know when it was deleted.

7 So, if this customer was deleted in 1987 or '89,  
8 it's going to put that loading right back there, if there  
9 was any loading. In 1989 I don't think there was any  
10 loading, so we wouldn't have put anything on the file.

11 Q Well, back to the other scenario we were just  
12 dealing with, if the customer had changed repeater, there  
13 would be no information under either report?

14 A That's right.

15 Q Either on the screen or the loading report,  
16 correct?

17 A If they didn't go ahead and change it here, they  
18 just deleted it, the record would still be on the screen,  
19 but it would not be in that loading report.

20 Q So, is it a fair characterization to say that any  
21 of the records in the database, whether they show up on the  
22 screen or whether they show up in the loading report, merely  
23 contained the last configuration that was entered on this  
24 screen?

25 A That's correct.

1 Q Now, I want to bring up one other point that you  
2 testified about. I understand the process you described  
3 about suppressing the delete flag so that you could print  
4 these November 1995 loading reports. I guess my question  
5 is, in March of '95, when these items were printed, was a  
6 similar suppression necessary?

7 A No, I don't believe so.

8 Q Is it correct that the customer print screens were  
9 able to be viewed whether or not the delete flag is there?

10 A Yes, that's correct.

11 Q So, if I wanted to, prior to your doing the  
12 modification that you did to enable the November '95 report,  
13 if I wanted as complete a picture as possible at that time,  
14 the print screens, the customer maintenance screens would  
15 give me that, correct?

16 A As best it could do, yeah.

17 Q Because it would include both deleted records as  
18 well as current records?

19 A Yes.

20 Q And, is it not true that the deleted records would  
21 show up with a date of, or might possibly show up with a --

22 A It might possibly, but when you hit the delete  
23 button, it does not automatically put an end date in the  
24 system.

25 Q So, that's another one of those items that has to

1 be manually entered?

2 A That's right.

3 Q And, may or may not be entered?

4 A That's right.

5 Q You testified that you believed Mr. Kay wouldn't  
6 have been able to copy the DBF files from the Xenix system.  
7 Do you have any personal knowledge of his familiarity with  
8 the Xenix system, beyond simply accessing the program?

9 A Well, Mr. Kay knew how to operate a good portion  
10 of the Xenix system. This was really the only application  
11 and a word processor that was running on the Xenix system.

12 Q Do you have any personal knowledge of Mr. Kay's  
13 ability to operate in Xenix at the operating system level?

14 A Yes, I do.

15 Q And, is that extensive or limited? What is it?

16 A He was a reasonably competent user.

17 (Pause.)

18 Q Just a moment ago, we were discussing the fact  
19 that the changed information on the customer print screen  
20 overwrites the old information and the old information is  
21 lost forever. Did Mr. Kay instruct you to design a system  
22 in that way?

23 A No, that's the way I would have designed it, and  
24 I've seen other systems built all over the place.

25 Q Isn't it true that this system that you designed

1 for Mr. Kay is actually a modification of a system that you  
2 had designed previously for someone else?

3 A No.

4 Q Oh, it's not?

5 A No.

6 Q Did you design a similar system for your brother's  
7 repeaters?

8 A Well, I started with Mr. Kay's, and then my  
9 brother, who works in the same, similar industry or the same  
10 industry, also needed a billing program. So, we used the  
11 same program.

12 Q So, I've got it backwards?

13 A You had it backwards.

14 Q Okay. Referring to Exhibit 281, that's the  
15 spreadsheet layout, now, you saw this document at your  
16 deposition, is that correct?

17 A That's correct.

18 Q So, actually, what was the date of your  
19 deposition, if you recall?

20 A I think it was in January, sometime.

21 Q Of this year?

22 A Yes.

23 Q So, you wouldn't have actually seen this  
24 particular document, since this document has a date stamp on  
25 it of May, 1998.

1 A Well, it would be a similar document.

2 Q Either at your deposition or now, you've never had  
3 the opportunity to review the entire file, to confirm its  
4 accuracy, have you?

5 A No.

6 Q So, any questions you've answered about this  
7 specifically relate to the format and what the document  
8 appears to be, nothing about the content, correct?

9 A Correct.

10 Q This exhibit, I will represent to you that this  
11 document, 281 in particular, appears to be a file dated,  
12 excuse me, named CUST 01.DBF?

13 A That's correct.

14 Q Do you recognize that as one of the database  
15 format files you've been referring to?

16 A Yes, that's correct.

17 Q The data file underlying that would be a series of  
18 such files, each with the .DBF extension?

19 A And the 01 for company one.

20 Q Okay, for company one. Is that the way Mr. Kay's  
21 denotes his company?

22 A Yes.

23 Q Did you ever copy any such files for Mr. Cordaro?

24 MR. SCHAUBLE: Objection, beyond the scope of the  
25 direct.

1 CHIEF JUDGE CHACHKIN: Overruled.

2 THE WITNESS: No, I did not.

3 BY MR. KELLER:

4 Q Did you ever assist Mr. Cordaro in copying such  
5 files from Mr. Kay's system to floppy disks?

6 A No, I did not.

7 Q Did Mr. Cordaro ever ask you to do any such thing?

8 A Not to my recollection.

9 Q At your deposition, you had an opportunity to  
10 review -- or subsequent to your deposition, I don't remember  
11 when -- but, in the course of discovery in this proceeding,  
12 you did have an opportunity to review the disks that I'm  
13 referring to, correct?

14 A Yes, I did.

15 Q What format were those files on that disk in?

16 A Those files were on the disk in an archive called,  
17 a format called ZIP, PKZIP.

18 Q What is that precisely, I mean, in general terms?

19 A There's a series of programs that have been  
20 created to compress the size of a data file, any kind of  
21 data file. Word processing, spreadsheet, database, to a  
22 much smaller format, and also includes several files into  
23 one file that could be put on a floppy disk or another kind  
24 of medium or stored, moved wherever you wanted and then re-  
25 expanded to its original size and file format.



1           There have been a number of those programs written  
2 over the years. And, those were in the ZIP format.

3           Q     Now, you testified earlier that, for example, in  
4 the process of converting from the Xenix system to the DOS  
5 system, it was necessary to cut up some of the files, some  
6 of them were too large to go on floppies. It's in order to  
7 accommodate that problem, where a file is too large to put  
8 on a floppy, that one would use one of these archive  
9 programs, correct?

10          A     Yes, but ZIP is not available on Xenix. You  
11 cannot ZIP a Xenix file.

12          Q     Understood, understood. Do you ever find it  
13 necessary, though, to compress files in such a fashion?

14          A     Yes, I do, often.

15          Q     Do you use PKZIP when you do so?

16          A     I don't use PKZIP.

17          Q     What do you use?

18          A     I use its predecessor, PKARC, the original program  
19 written.

20          Q     And, if you'll pardon the lingo, burdening the  
21 record with the lingo, a ZIP archive, could I look at the  
22 file on a computer list, a directory, would have an  
23 extension .ZIP, correct?

24          A     That's correct.

25          Q     Is it correct that the ARC program would have an

1 extension .ARC?

2 A That's correct, too.

3 Q And, the two programs are not interchangeable, are  
4 they?

5 A I think you can extract an archive with PKZIP, but  
6 you can't --

7 Q But, I couldn't use ARC to create a ZIP file?

8 A No, you can't.

9 Q If someone had asked you to copy files from Mr.  
10 Kay's computer, and in the process of doing so, if you  
11 wanted to comply with that request, it became necessary for  
12 you to compress the files in order to put them on floppies,  
13 you would use archives rather than PKZIP?

14 A That's correct.

15 MR. KELLER: We have no further questions, Your  
16 Honor.

17 CHIEF JUDGE CHACKIN: Any redirect?

18 MR. SCHAUBLE: A little bit, Your Honor.

19 CHIEF JUDGE CHACKIN: Go ahead.

20 REDIRECT EXAMINATION

21 BY MR. SCHAUBLE:

22 Q Now, Mr. Sobel, you testified further concerning  
23 corruption of some of these files that you noted in May of  
24 1994, would this corruption have impaired in any way the  
25 ability of Mr. Kay's business to issue bills to its

1 customers?

2 A No, it wouldn't.

3 Q Would the corruption have impaired in any way the  
4 ability to view data contained in the D base file?

5 A It might have, if you were trying to view records  
6 for this customer and the customer was still in the data  
7 file with the rest of the record corrupt, okay. It might  
8 have showed up that way.

9 Q Do you recall approximately how many records were  
10 corrupted?

11 A No, I don't.

12 Q Do you recall whether there were specific types of  
13 records that were corrupted?

14 A I believe it was related to a billing history,  
15 invoice -- there's a file for invoicing, and I believe that  
16 most of the corruption was in that file.

17 Q Do you recall any other type of data records that  
18 were corrupted?

19 A Not specifically, no.

20 Q Now, you testified concerning how information was  
21 overwritten. Now, are you familiar with what a back up tape  
22 is?

23 A Yes.

24 Q Can you explain it for the record?

25 A It's a way of copying everything on your computer

1 to media, a back up tape that can be removed from the system  
2 and stored.

3 Q Okay. To your knowledge, has Mr. Kay's business  
4 backed up his computer system?

5 A Mr. Kay's DOS system has a back up tape and he  
6 backs it up from time to time.

7 Q Do you know whether he had a back up tape for the  
8 Xenix system?

9 A I don't recall specifically.

10 Q Is it correct that when he would conduct a back up  
11 on the DOS system, that those underlying files would contain  
12 customer information as of the date the back up was  
13 performed?

14 A That's correct.

15 Q Now, Mr. Sobel, you testified concerning certain  
16 files for Mr. Cordaro. Was there a time when you were asked  
17 to review a certain computer file that you were informed  
18 came from Mr. Cordaro?

19 A Could you restate that?

20 Q Certainly. Was there a time when you had an  
21 opportunity to review a file which you were informed came  
22 from Mr. Cordaro?

23 A From Mr. Cordaro? Given to me by Mr. Cordaro or -

24 -

25 Q Not given to you. That came ultimately --

1 A Yes.

2 Q Okay. And, do you recall in what format that file  
3 was?

4 A I think you're referring to the floppy disk file  
5 that was given to me sometime before my deposition?

6 Q Correct.

7 A Okay.

8 Q Would you just briefly explain the circumstances  
9 under which you were given that disk?

10 A I happened to be at Mr. Kay's office and Mr. Kay  
11 handed me this disk and said this disk was given to him  
12 through the legal proceeding that Mr. Cordaro, it was in Mr.  
13 Cordaro's possession.

14 Q And, did you conduct an analysis of that file?

15 A Yes, I did.

16 Q Please briefly describe the analysis you did?

17 A I viewed the file on the disk. There was a single  
18 archive. I copied that archive to a hard disk on one of the  
19 work stations. I unzipped the file and found a number of  
20 different files contained therein, and I proceeded to open  
21 up those files in Fox Pro to look at the record.

22 I immediately recognized them as files related to  
23 the system. I compared the record on this file with his  
24 existing database and found that they are one for one all  
25 the way down, as far as this file went, and I attempted to

1 ascertain the dates that this file was copied off the  
2 system.

3 Q Okay, and did you reach a conclusion as to the  
4 dates that the files were copied off?

5 A Yes, I did.

6 Q Do you recall what the date was?

7 A No.

8 MR. KELLER: Can counsel make a representation  
9 that --

10 CHIEF JUDGE CHACHKIN: You can't --

11 MR. KELLER: We believe it's March, '95.

12 THE WITNESS: I can tell you that the date stamp  
13 of the file, as it existed on the floppy disk, was, in fact,  
14 the date that it was removed from the system.

15 BY MR. SCHAUBLE:

16 Q Okay.

17 A I don't recall what the date is.

18 Q Okay. So, is it correct that you concluded that  
19 the underlying files that were zipped did, in fact  
20 constitute files off of Mr. Kay's system on a given day?

21 A On that date, yes.

22 MR. SCHAUBLE: No further questions, Your Honor.

23 CHIEF JUDGE CHACHKIN: Do you have anything  
24 further?

25 MR. KELLER: Just one or two questions. March 5,

1 '97 -- can we go off the record?

2 CHIEF JUDGE CHACKIN: Let's go off the record.

3 (Discussion held off the record.)

4 CHIEF JUDGE CHACKIN: Back on the record. March  
5 8, 1995 is the date?

6 MR. SCHAUBLE: That sounds correct, Your Honor.  
7 We'll stipulate.

8 MR. KELLER: So, we've stipulated on the record  
9 that the files were removed from Mr. Kay's computer on March  
10 8, '95.

11 RE-CROSS-EXAMINATION

12 BY MR. KELLER:

13 Q My question for you regarding that, Mr. Sobel, is  
14 were you at some point subsequent to your deposition then  
15 asked to examine your billing records and any other  
16 documents to determine whether you have any documents  
17 indicating whether you were at Mr. Kay's shop on or about  
18 March 8, 1995?

19 A I gathered my billing records for these dates on  
20 the subpoena and I reviewed that, and I don't believe I was  
21 there on that day. I do recall specifically looking for  
22 that information after I saw the floppy disk. And, on my  
23 time sheet, I show that I was not on that date at that  
24 client's place.

25 Q Do you recall, sitting here right now, whether you

1 were at the shop on or near any other date in close  
2 proximity to those?

3 A I looked around. I think maybe I was there maybe  
4 a week later or a week earlier or something.

5 Q You testified just a moment ago in response to Mr.  
6 Schauble's redirect that the corrupt files discovered tended  
7 to be in the invoice history. Is that a specific DBF file  
8 in this series?

9 A Yes, it's called bill zero one.

10 Q Dot DBF?

11 A Dot DBF.

12 Q Now, am I understanding correctly that the  
13 information for a given customer, when we look at one of  
14 those customer maintenance screens, that the various pieces  
15 of information for the customer might be spread over a  
16 series of different DBF files?

17 A Most of the items that appear on the screen are  
18 contained in the customer's file. If you wanted to look for  
19 history of cash receipts or history of invoices, you would  
20 be opening up different files to gather that information.  
21 One of them would be the billing file.

22 Q You testified, Mr. Sobel, that there came a point  
23 when the way to deal with the corruption was just to delete  
24 it and actually remove a series of customer records,  
25 correct?



1 A Yes.

2 Q Would that have happened across all of the DBF  
3 files or would it have happened only in a particular DBF  
4 file?

5 A Generally, it would have happened in one database  
6 file. To understand that, you really have to look at how I  
7 sort data. There was -- I store files in history files and  
8 I store files in current files. The bills DBF and the cash  
9 DBF are where I store cash receipts and billing for the  
10 current year.

11 When I close the year, I send them out to  
12 historical files. It was probably, and I'm guessing that it  
13 was in that file -- which gets rather big -- that that  
14 corruption occurred, because it was in the history. And, if  
15 the corruption occurred at some point in time, I probably  
16 had to remove all the records that occurred before that  
17 point to maintain system integrity.

18 Q I have one more question. The corrupt files,  
19 could the corruption that you observed have been caused by  
20 damage to the data files?

21 A Sure, we see corruption in data files from time to  
22 time, especially if they get very large. Could have been  
23 just a power shut down. It could have been a failure of the  
24 hardware component. It could have been a lot of reasons.

25 MR. KELLER: No further questions.

1 CHIEF JUDGE CHACHKIN: Anything further?

2 MR. SCHAUBLE: Just one question, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. SCHAUBLE:

5 Q Mr. Sobel, is it correct that you never actually  
6 determined the cause of the corruption?

7 A No, never could determine that.

8 MR. SCHAUBLE: Nothing further, Your Honor.

9 CHIEF JUDGE CHACHKIN: You're excused, then.  
10 That's all the witnesses we have for today?

11 (Witness excused.)

12 MR. SCHAUBLE: That's correct, Your Honor.

13 CHIEF JUDGE CHACHKIN: Tomorrow we have two  
14 witnesses listed, is that it?

15 MR. SCHAUBLE: One, Your Honor, Roy Jensen.

16 CHIEF JUDGE CHACHKIN: Is that going to take all  
17 day?

18 MR. KNOWLES-KELLETT: I think we can confidently  
19 say we'll be well into the afternoon. We probably will not  
20 have that long of an examination for Mr. Jensen.

21 CHIEF JUDGE CHACHKIN: All right, and we have  
22 Carla Pfeifer for, that's the last witness, on December 30.

23 MR. KNOWLES-KELLETT: Correct, Your Honor.

24 CHIEF JUDGE CHACHKIN: Then, who will be the first  
25 witness January 11?

1 MR. SCHAUBLE: Mr. Gerrard.

2 CHIEF JUDGE CHACHKIN: And, where will Mr. Sobel  
3 be in this?

4 MR. KNOWLES-KELLETT: He'll be in that afternoon.  
5 I think it's Barbara Ashauer and he's that afternoon and  
6 he'll be going over into the next morning.

7 CHIEF JUDGE CHACHKIN: And, then, Hessman will  
8 be --

9 MR. KNOWLES-KELLETT: Cordaro will be on Tuesday  
10 and Hessman on Wednesday.

11 MR. KELLER: Would this be a good time to go over  
12 the schedule now? Would it be possible to break at 3 p.m.  
13 on the 11th, when we have Mr. Sobel. With Mr. Sobel, I do  
14 need to be here for that.

15 MR. KNOWLES-KELLETT: I apologize. When Mr. Sobel  
16 brought up the conflict, I totally forgot. My understanding  
17 is Mr. Sobel has no problem staying over till Tuesday. It  
18 might be best to try to move Barbara Ashauer to Wednesday,  
19 in an effort to try to break at 3 p.m.

20 MR. SCHAUBLE: Somebody has to check with Ms.  
21 Ashauer.

22 MR. KNOWLES-KELLETT: She was glad to get out of  
23 the end of the year, I think, and be moved to January.

24 MR. KELLER: Can we do that, then, subject to your  
25 being able to confirm?

1 MR. SCHAUBLE: We'd have to check in terms of the  
2 travel arrangements and things like that.

3 CHIEF JUDGE CHACHKIN: So, wait a minute. Sobel  
4 is going to be the first witness or the second witness?

5 MR. SCHAUBLE: The second witness that day, Your  
6 Honor.

7 CHIEF JUDGE CHACHKIN: The first witness is your  
8 expert witness, is that it?

9 MR. KNOWLES-KELLETT: That would only be -- our  
10 written testimony, again, so I think -- our proposed  
11 testimony, their cross-examination, I'm fairly confident  
12 it's going to be very short.

13 CHIEF JUDGE CHACHKIN: You don't want to take Mr.  
14 Sobel first?

15 MR. KNOWLES-KELLETT: You don't have to be here  
16 for Cordaro -- for Gerrard?

17 MR. KELLER: No, I would like to be here for both.  
18 This is not a big deal, but I thought if we could shuffle  
19 the schedule a little bit to accommodate that. I don't care  
20 what order we go in.

21 CHIEF JUDGE CHACHKIN: Well, you can work it out  
22 off the record. So, we're in recess, then, till tomorrow at  
23 9 a.m.

24 //

25 //

(Whereupon, at 12:25 p.m., the hearing was  
recessed, to reconvene at 9:00 a.m. on Tuesday, December 29,  
1998.)

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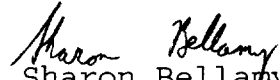
CASE TITLE: In Re: JAMES A. KAY, JR.

HEARING DATE: December 28, 1998

LOCATION: Washington, DC

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Date: 12-28-98

  
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